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The question of the governor's power regarding civil rights issues was discussed. Through the "Governor's Code of Fair Practices," which briefly stated that the state's basic policy was against discrimination, the governor as well as all State officials had sufficient power to fight discrimination. The officials had further power with such licensing controls as enforcing certain rules for real estate brokers.

Some of the programs promoted by State executive action included fair employment practices in State legislation, State employment agencies, and State contracts. Fair housing practices should involve statutes and ordinances prohibiting discrimination in publicly assisted housing. Realtors and lenders should have their policies inspected and controlled. Schools and public accommodations should be integrated. This could be done through State assistance.

The doctrine of "State involvement" in the Fourteenth Amendment and in repeated Supreme Court rulings made clear the obligation of the executive to aid those involved in racial discrimination.

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The Potomac Institute

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State Executive Authority To Promote Civil Rights

An Action Program for the 1960s

Office of Education-EEOP
Research and Materials Branch

The Potomac Institute, Inc.

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Introduction

"I swear that I shall uphold and defend the Constitution of the United States . . ."

IN THESE or similar words, the Governors of the fifty states have pledged themselves to protect the constitutional rights of their citizens, including the inalienable right to equal protection regardless of race, color, creed, or national origin.

How far will the Governors and other executive officers in the fifty states carry out this pledge? The prospects seem favorable. Every indication points to the 1960s as the decade during which executive power will become imaginatively and widely employed in our states to promote desegregation and equal treatment for Negro Americans.[1]

Today, a century after the Emancipation Proclamation, we are in the midst of another great emancipation—a movement in which Negroes are striving not only for equal treatment before the law, but for an equal role in a desegregated society. This new emancipation has as its goal a society in which nonwhite Americans will have equal access to housing, employment, education, public accommodations and other necessities of a decent life. In the achievement of this goal, public officials have a central and crucial role to play. Our governments participate directly in the operation of schools, the construction

[1] Negroes comprise the largest minority group in America, with the greatest and most pressing civil rights problems. However, the suggestions set forth in this publication for state executive authority to promote civil rights are intended to be equally applicable to other racial minorities, as well as to religious and ethnic groups, which bear the brunt of discrimination on the basis of race, color, creed, or national origin.

of housing, the employment of millions, and the regulation of great economic enterprises. Moreover, the conduct of public officials sets the pattern for the entire nation.

The national government is increasingly recognizing its responsibility for the promotion of civil rights in the many situations where Federal activities affect racial practices. In successive steps since the 1940s, national administrations have prohibited discrimination in Federal employment, Federal contract employment, and in the Federal military service. Recently discrimination has been forbidden in leased Federal properties, national parks, facilities on interstate carriers and at interstate terminals, and in Federally supported airports and schools. On November 20, 1962, the Executive Order barring discrimination in Federally assisted housing projected the Federal policy into the housing market throughout the nation.[2]

Nor has the exercise of executive responsibility for promoting desegregation been limited to the Federal level. The executives in a number of states have embarked on vigorous action programs. In states such as Michigan, Pennsylvania, and New York, Governors have promulgated Codes of Fair Practices applicable to the activities of all state agencies. In other states, a growing body of executive rulings and agency determinations shows state officials exercising responsibility to end governmental aid to restrictive racial practices and to increase governmental support for desegregation in state supported or assisted institutions.

But these commendable uses of executive authority to promote civil rights in an increasing number of states only scratch the surface when measured against the job which remains to be done. There is no question that the state executive has the authority to take bold and significant steps against remaining segregation practices. In Part III, the legal basis of executive authority to promote civil rights is reviewed. The analysis of pertinent rulings indicates that the Fourteenth Amendment applies to executive action whenever "to some significant extent the state in any of its manifestations has been found to have become involved" in private discrimination.

The Supreme Court has applied the prohibition on racial discrimination in cases of state involvement with political parties, labor unions,

[2] The President has received general and bi-partisan acclaim for his appointment of qualified Negroes to high public office, for the desegregation of interstate travel facilities, for the development of an effective system to enforce equal opportunity in Federal jobs and Federal contractor employment, and for the prosecution by the Department of Justice of civil rights violations in voting.

property covenants, transportation, educational institutions, and licensed facilities. From these Constitutional rulings emerge direct state executive authority to condition all forms of public grant, contract, and assistance upon nondiscrimination.

Whatever questions might once have been raised about the responsibility and authority of state executive officials to end discrimination, to withdraw support from discriminators, and to promote desegregation through the use of their executive authority, no genuine doubt remains today. The courts, successive Federal administrations, and a constantly increasing number of state Governors and Attorneys General have ruled that Constitutional and statutory prohibitions on discrimination follow governmental aid and assistance.[3]

The question for the future, then, is not whether the state executive has the legal authority to condition state aid and support on nondiscrimination by the recipient. Rather, *the significant question is how far state administrations will effectively employ their authority to withdraw assistance from discrimination and affirmatively promote desegregation in various aspects of the economic life and daily concerns of the community.*

The need for firm executive action to this end has never been as great as today. Everywhere minority citizens are protesting the continued flouting of their legal and moral right to equal treatment. Yet in too many states the legislature, shackled by insular interests, is slow to enact specific civil rights laws affecting governmental programs. Under such circumstances, executive departments must themselves exercise the Constitutional controls on governmental assistance, licensing, and regulation.

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[3] Typical of such rulings is that by the Attorney General of Pennsylvania in December 1960, barring all disbursements of public funds to institutions founded on discriminatory covenants or practicing racial discrimination in conducting their affairs: "The use of public funds by a private corporation or institution brings such institution within the ambit of the Fourteenth Amendment and hence racial or religious discrimination is prohibited: *Kerr* v. *Enoch Pratt Free Library of Baltimore City,* 149 F.2d 212, cert. den. 326 U.S. 721 (1945); *Commonwealth* v. *Board of City Trusts,* 353 U.S. 230. Thus, whether the designation of the institution is made by the Legislature or some other official, it is clear that under the United States Constitution public funds may not be used for institutions or organizations which discriminate on the basis of race, creed, or color. It is our opinion and you are accordingly advised that the Fourteenth Amendment to the Constitution of the United States prohibits the disbursement of public funds to any institution which: (a) is founded upon covenants or conditions which discriminate on account of race, creed, or color, or (b) conducts its affairs in such fashion as to discriminate on account of race, creed, or color."

The task ahead for the conscientious state executive requires intelligent application of experience in civil rights. In that task there is need for a concise review of mechanisms for promoting civil rights through executive authority in such critical areas of concern as employment, housing, education and public accommodations. The material which follows has been selected after consultation with experts in a number of states. It is hoped that, with appropriate adjustments for local differences, it will materially assist state officials who would make more effective use of their authority to achieve equal opportunity for minority citizens.

The Job To Be Done

Civil Rights Check List
for States and Localities

I. **Policy Declaration.** Is there in this jurisdiction (by virtue of legislation or executive order) an enforceable policy of nondiscrimination in:

	YES	NO
1. public and private employment?	☐	☐
2. public and private housing?	☐	☐
3. public and private education?	☐	☐
4. public accommodations and facilities?	☐	☐

II. **Enforcement Authority.** Is there in this jurisdiction general authority for promoting civil rights by:

1. a Civil Rights or Fair Practices Commission?	☐	☐
2. a Governor's Fair Practices Code binding executive agencies to nondiscrimination?	☐	☐
3. an Inter-departmental Committee on Civil Rights or other regular forum for participation of executive agencies in civil rights programs?	☐	☐
4. a Civil Rights Coordinator on the Governor's staff?	☐	☐
5. a Civil Rights Department in the Office of the Attorney General?	☐	☐

III. **Implementation Programs.** Is there in this jurisdiction administrative machinery providing for:

A. EMPLOYMENT

1. State Employment Service procedures for obtaining fair employment compliance from participating employers, and for reporting violations? ☐ ☐
2. affirmative minority recruitment programs in state employment and comprehensive reporting on minority placement? ☐ ☐
3. inspection and compliance programs in contracting departments of the state respecting fair employment on state contracts? ☐ ☐

B. HOUSING

4. regulations conditioning realtor licenses on nondiscrimination, including compliance with existing statutory requirements? ☐ ☐
5. policy declarations and administrative controls regarding lending institution and builder-developer nondiscrimination? ☐ ☐
6. nondiscrimination policy declarations and administrative controls affecting state-assisted public housing and urban renewal? ☐ ☐

C. EDUCATION

7. a clear policy declaration and an implementing program to overcome *de facto* segregation in public schools? ☐ ☐
8. a program to overcome the cultural lag in learning receptivity among minority group children? ☐ ☐
9. inclusion of human relations subject matter in the curriculum, and review of textbooks to eliminate minority group stereotypes? ☐ ☐
10. a policy declaration against admissions discrimination in private institutions, and administrative controls to obtain compliance at state-assisted institutions? ☐ ☐

11. regulations conditioning license renewal for state-chartered vocational and educational institutions upon compliance with existing nondiscrimination requirements in admission? ☐ ☐

D. Public Accommodations

12. policy and regulations requiring nondiscrimination by proprietors of state-assisted public accommodations serving tourists and other travelers? ☐ ☐

13. licensing controls on public accommodations respecting nondiscrimination at hotels, resorts, restaurants, hospitals, and other facilities serving the general public? ☐ ☐

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PART ONE

Executive Support For Civil Rights

TWENTY YEARS AGO there was little experience to guide those in state government who were dedicated to effective promotion of civil rights. Most Federal and state civil rights legislation then on the books had proved cumbersome because of limitations on court proceedings for enforcement. However, since the 1940s, a great many states and municipalities have buttressed civil rights requirements with provisions for implementation and enforcement. Today some thirty states have fair employment, housing, or other civil rights statutes, many of them enforceable by State Commissions on Human Rights or Fair Practices.

Yet even today's civil rights statutes are inadequate to achieve complete desegregation and fair practices in vast and important areas of state concern. First, great gaps remain in the declaration and enforcement of civil rights policy. In many states, the legislatures have not acted on pressing civil rights needs; or, having generally declared the civil rights principle, they have failed to provide adequate enforcement machinery. *It is a principal function of state executive power to fill in such gaps in the declaration and enforcement of civil rights.*

Second, a shortcoming of the present approach of state legislation is that it often relegates the problem entirely to the restricted authority of a state commission, while government departments and agencies with close involvement in such areas as housing, employment, education, and public facilities remain indifferent and unaware of their own civil rights responsibilities and powers. *The second urgent task*

in the promotion of civil rights through state executive action is the integration of civil rights responsibilities into the consciousness and functions of all executive officials and departments.

State Civil Rights Commissions, as presently constituted, do not provide a complete and final answer to the achievement of equal opportunity for minority citizens. They do play a vital and indispensable role, particularly where they are adequately staffed with competent professional personnel. Nevertheless, it is of vital importance that other governmental agencies and departments also assume a role in the achievement of civil rights progress. There is no inconsistency in these two approaches. Indeed, a meaningful civil rights program, in which all concerned governmental agencies and personnel participate, may appropriately be guided and supervised by the State Civil Rights Commission, since it has the services of the government employees most knowledgeable and dedicated in the civil rights area.[4]

Fortunately, there is recent experience upon which the executive may draw in the promulgation of civil rights policy and enforcement authority, as well as in the task of integrating civil rights responsibilities into the executive branches of government. This experience indicates that the executive who recognizes his responsibility under the Fourteenth Amendment to insure equal protection of the law to all, and applies courage and conviction to the problem, can achieve immense forward strides in promoting nondiscriminatory practices.

Governor's Code of Fair Practices

Following the earlier directive of Governor Harriman, Governor Nelson Rockefeller of New York promulgated in 1960 the first "Governor's Code of Fair Practices" (see Appendix A). The Code declares the state's basic policy against discrimination and makes it applicable to all state officials. Thus the activities of the state affected include such critical areas as use of state facilities, the state's employ-

---

[4] The 1957 directive of Governor Harriman of New York provided, in part, that "when notified by the State Commission Against Discrimination that an establishment or individual already licensed or applying for a license from a department has been found, after a complaint and a public hearing by the Commission, to be in violation of the Law Against Discrimination, department heads should take such action as may be warranted with respect to the issuance, continuance, or renewal of such license, within their prerogatives under the law. The recent agreement made between the State Commission Against Discrimination and the License Commissioner of the City of New York, governing discrimination by employment agencies, provides an example of how joint action by two public agencies can achieve a mutual objective."

ment policies, state contracts and employment services, financial assistance, licensing, regulatory activities, and others.

Perhaps the most significant feature of the Governor's Code is that it addresses itself to all of the administrative factors in the achievement of civil rights—and that it does so in a state which has for many years had a legislative program of civil rights enforced by a strong and well-staffed State Civil Rights Commission. The Governor's Code not only declares civil rights *policy*, but it adds to existing *enforcement* powers of state agencies, and it makes clear to all state executive officials and departments their *direct responsibility* to refrain from any form of state assistance to discrimination.

Following the New York Code, in May of 1961 Governor Swainson of Michigan adopted a Code of Fair Practices which goes even farther in forbidding all forms of state assistance to those who discriminate and enjoins state officials to adhere to the announced policy (see Appendix B). The Code provides for disciplinary action whenever it is found that any state "licensee has, in his capacity as such, discriminated against anyone because of race, religion, national origin or ancestry . . ." Governor Lawrence of Pennsylvania proclaimed a Fair Practices Code (see Appendix C), and other states are currently considering such codes. This important device promises to become more generally employed in the exercise of state executive responsibility to promote civil rights.

Licensing Controls

Responsibility does not end with the Governor. It attaches equally to all state executive officials and agencies. For instance, nondiscriminatory practices are of direct interest to the various licensing agencies of the state. They must be concerned that the privilege of public franchise not be exercised by licensees in violation of legislative and executive civil rights requirements. Here, too, recent examples are available to point the way toward effective implementation of civil rights by agencies and departments.

The appropriate licensing authorities in Michigan, New York, and Pennsylvania have promulgated rules requiring real estate brokers to refrain from discriminatory practices, and conditioning license renewal upon compliance. Rules adopted by the Pennsylvania Real Estate Commission and the Secretary of the State of New York prohibit "blockbusting" or promotion of "panic selling" by realtors. Rule 9 of the Michigan Corporation and Securities Commission forbids

discriminatory refusal to sell or deal in real estate. The Attorney General of Nevada ruled on September 1, 1961 (Opinion 243) that the Nevada Gambling Commission and the Nevada Gaming Policy Board have the power to determine that racial or religious discrimination by persons operating a gambling establishment under a license is an "unsuitable" method of operation and may discipline licensees for such discrimination. Similar regulations have been adopted in California respecting the practices of taverns licensed by the Alcoholic Beverages Control Board. In New York, the State Board of Regents adopted a new regulation on December 14, 1962, declaring that the discriminatory refusal of licensees to provide treatment or other professional services shall be deemed "unprofessional conduct," subject to disciplinary proceedings.[5]

In these and like situations, state executive departments have exercised their responsibility to declare and specify the civil rights obligations of those whom they license, regulate, or assist, and make clear the sanctions which will attach to violators. Of course, subordinate state agencies are more likely to act on these responsibilities when the Governor himself has declared a forthright civil rights policy and made clear his dedication to its achievement.

Executive promulgation of civil rights policy is essential, but no one should confuse promulgation with practice. Declaration of rights is a simple task compared to the effort to make nondiscrimination a habit of thought and action within executive departments of government. In the long run, nothing is as important to progress in civil rights as promoting the assumption of responsibility within the departments and agencies of state governments.

Experience indicates that State Civil Rights Commissions, proceeding by complaints and "after the fact" remedies, cannot fully promote civil rights while other governmental agencies remain unconcerned. Recently, a major effort has been made in New York to promote acceptance of civil rights responsibility by the state departments con-

[5] New York State Board of Regents: "Section 268. The refusal of any practitioner holding a license or certificate issued by the department, pursuant to the provisions of the Education Law, to provide treatment or other professional service to any person on account of race, religion, creed, color or national origin, shall be deemed unprofessional conduct in the practice of his profession."

The affected professions and occupations licensed or certified by the Board of Regents include: medicine, osteopathy, physiotherapy, dentistry, dental hygiene, veterinary medicine, pharmacy, registered nursing, practical nursing, podiatry, optometry, ophthalmic dispensing, professional engineering, land surveying, architecture, landscape architecture, public accounting, certified public accounting, certified shorthand reporting, and psychology.

cerned with public education, housing, labor, and other matters. Through public and private agreements, the State Board of Regents and the Commissioner of Education have taken important actions to remedy *de facto* public school segregation and have assumed advisory responsibility for new school location and allocation of students to existing schools. These are problems which clearly could never have been resolved by the process of individualized complaint, hearing, and adjudication.

Similarly, it has been found in New York that the Commissioner of Labor has fair employment enforcement powers by virtue of the reporting and inspection systems which his department applies to various other state-controlled aspects of employment. The Commissioner of Labor's assumption of responsibility for reporting and policing of the state's fair employment requirements has been a signal achievement, pointing the way towards complete compliance with the statutory requirement.

Other examples are reviewed in Part II, but the general principle emphasized here is that the key factor in achieving fuller civil rights compliance is the acceptance of departmental responsibility for the enforcement of civil rights. Government agencies with experienced staff, regulatory and reporting requirements, and a variety of controls and contacts, can make civil rights a daily reality by vigilant adherence to this principle.

Departmental Coordination

There are a number of formalized arrangements which the state executive may institute to promote departmental responsibility for civil rights. Among these are:

1. Executive Department Conference. When Governor Swainson of Michigan promulgated the Governor's Code in 1961, he met with the heads of all state agencies and departments. The conference was designed to make clear to state officials the Governor's determination to carry through in fact the rights he was promulgating as a matter of law. Further to impress on state officials the seriousness with which he regarded the provisions of the Code, Governor Swainson called a second meeting of all department and agency heads to meet with representatives from the U. S. Department of State, the U. S. Commission on Civil Rights, the President's Committee on Equal Employment Opportunity and the Michigan Advisory Committee to the U. S. Commission on Civil Rights.

The Governor chaired the conference and, in his opening address, said, in part:

> ". . . . We here today represent the top executive leadership of the State of Michigan; it is in this capacity that I have asked you here to consider with me . . . what we may do through the executive branch of government to make more secure the rights of all our citizens.
>
> We must examine our respective responsibilities and roles to determine what we can do both internally in our own policies and practices as employers—and externally in our services to the people of Michigan.
>
> And so, I pose to you the question: what can you do *now*, under existing legislation, under present circumstances, to move your unit of state government ahead in this vital task? What can we do together to make Michigan a leader among the states of the nation in the search for a more truly meaningful, practicing, and living democracy?"

In closing the meeting, the Governor remarked that this was only a beginning and that he would expect individual reports, in accordance with Code provisions, on steps undertaken to implement the Code.

The executives of many state agencies, though philosophically committed to civil rights, fail to appreciate the extent to which their own activities may be supporting and enforcing existing segregation and discrimination. Therefore, whether or not a Governor contemplates the promulgation of a Code of Fair Practices, a civil rights conference with heads of state agencies is of utmost importance if they are to appreciate the scope of their civil rights obligations. At such a meeting, department and agency heads may be instructed to review all programs and rules for their impact in the area of civil rights, to prepare necessary revisions, and to provide for periodic reports of actions and progress.

2. Sub-Cabinet Committee on Civil Rights. Building the concept of civil rights responsibility into the activities of state agencies and departments is a task which can best be achieved through regular consultation and cooperation among governmental agencies. In recognition of this fact, President Kennedy created a Sub-Cabinet Committee on Civil Rights, which may commend itself to the consideration of Governors. Each of seventeen Federal departments and agencies

appointed a designee—usually an Assistant Secretary or a Special Assistant to the Secretary—to attend monthly meetings at the White House or the Executive Office Building. The meetings, which are chaired by a Presidential assistant, concern themselves with civil rights problems common to the agencies, such as that of employment discrimination. Often, major civil rights actions by the President and the Department of Justice are considered in advance by this group, and it has been found to be a fruitful source of new ideas for civil rights implementation. Suggestions—such as a positive program of recruitment through contacts in the Negro community—having been found to succeed in one agency, have been adopted by others as a result of this common forum of communication.

The Federal Sub-Cabinet group has made a significant contribution to executive promotion of civil rights. There is no reason why a similar device should not be employed within state governments to promote communication and cooperation among departments and agencies. In such a regular forum of communication, the imagination and experience of each of the departments can be made available to all others. The Governor's attendance and concern with the group's activities can help make this device a vital factor in imbuing state agencies with a consciousness of their civil rights responsibilities.

3. Governor's Civil Rights Coordinator. For many years now there has been in the Office of the President of the United States a special assistant concerned with civil rights. A number of states, too, have provided for such an executive official on the Governor's staff. As executive responsibility is increasingly accepted within governmental departments, the functions of the Governor's special assistant for civil rights take on growing importance.

In some states, in the absence of a Governor's civil rights assistant, coordinating and activating functions often center in the Office of the Attorney General and in the State's Civil Rights Commission. Yet, because these officials are at best on a level with the heads of other governmental agencies and divisions, they are inevitably curtailed in exercising coordinating responsibilities. A special assistant to the Governor, on the other hand, represents the authority of the Governor's own office in the task of keeping heads of departments and agencies alert to their obligations.

4. Cooperation Agreements with State Civil Rights Commission. Another principal device for greater recognition of civil rights responsibilities throughout government may be found in agree-

ments negotiated between State Civil Rights Commissions and other state agencies. Actually, many civil rights statutes specifically anticipate such working agreements by empowering the Commission to request and obtain cooperation from other state agencies. Such agreements with Departments of Labor, Education, Licenses and others have achieved a number of beneficial results.[6]

The agreements facilitate the handling of civil rights complaints and grievances by working arrangements between the staff of the Civil Rights Commission and the agencies. They draw upon the facilities and resources of the several agencies to police and inspect compliance and to carry out affirmative programs within the private sector. The agreement method has been found particularly useful in inducing the several licensing authorities of the state to exact nondiscriminatory conduct of their licensees.[7] Any balanced program of civil rights enforcement at the state level should incorporate such executive agreements between governmental agencies and the state Civil Rights Commission.[8]

5. Assistant Attorney General for Civil Rights. To date, seven states (New York, Massachusetts, California, Illinois, Pennsylvania, Michigan and New Jersey) and the Federal Government have established within the Office of the Attorney General a special civil rights division under an Assistant Attorney General. Those familiar with the work of these divisions attest to their usefulness. In instances where the Office of the Governor does not include a top civil rights consultant or assistant, the Assistant Attorney General for Civil Rights can perform vital coordinating functions beyond those of enforcement through prosecution and litigation. The Assistant Attor-

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[6] See Rutledge and Valentine, *Cooperation Agreements, The Journal of Intergroup Relations*, volume I number 3, Summer 1960 (published quarterly by National Association of Intergroup Relations Officials).

[7] In August, 1962, the New York State Commission on Human Rights made an agreement with the Department of State to turn over to the Department details of all cases involving real estate brokers and salesmen. The Department of State has power to suspend or revoke the licenses of real estate agents who fail to observe state anti-discrimination laws. The Department will also undertake an educational campaign to inform real estate brokers of the provisions of the laws.

[8] Serious consideration needs to be given to the status of Civil Rights Commissions within the governmental bureaucracy. In some states, the Commissions are part of the Executive Department itself (as in New York), while in others they are subordinate bodies within particular departments of government (as in Pennsylvania, New Jersey and California). It has been found that the elevation of the Civil Rights Commission to a level of parity with other departments of government materially adds to the persuasive power of the Commission within the executive hierarchy.

ney General can become a focal point of activism for civil rights observance within the communities and among governmental agencies.[9]

Each of the foregoing means for promoting civil rights can play a vital role within state government. When supplemented by a clear policy and authority from a forceful and determined administration, these executive supports can translate civil rights from the realm of hope to that of actuality.

But beyond these general mechanisms, there remain the specific problems of racial discrimination in vast areas of daily life to which state policies and programs must be addressed. The problems presented by restrictive racial practices in housing, employment, education, and public accommodations are acute and widely varied. To the extent that they differ, so, too, the solutions to be pursued by governmental authority must differ. The succeeding section reviews prevailing discriminatory practices in these areas and means by which governmental power may most efficiently be employed to curtail such practices and achieve a desegregated society.

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[9] Particularly where no State Civil Rights Commission enforcement powers exist or where those commissions created by law are inadequately empowered to secure compliance, the Attorney General's Office has tended to play an important role in the promotion of civil rights. A problem commonly encountered, however, is the lack of clear subpoena power in the Office of the Attorney General to obtain documents and information in the community and even within agencies of government. Where legislation for this purpose has not been enacted, there would appear to be room for executive action by the Governor himself to empower the Office of the Attorney General to obtain all required information from governmental departments and agencies for the implementation of civil rights programs.

PART TWO

Action Programs For The State Executive

ANY PROGRAM OF state executive action to promote civil rights must take account of the differing nature of the civil rights problems in the major fields of concern. In fields where desegregation has been instituted in accordance with the law, the state's involvement is needed to overcome *de facto* segregation and vestigial racial practices. In other areas, desegregation may be obstructed by economic and cultural barriers which require larger measures of remedial action. State officials must also recognize the differing degrees of their control—differences between areas under direct governmental authority, such as state employment and state contract employment, and areas where state authority derives only from collateral forms of state assistance, licensing, and regulation, as in private housing and education.

In light of these differing factors, how may the state executive achieve maximum civil rights progress in the fields of employment, housing, education and public accommodations?

EMPLOYMENT

Fair employment practices have been the focal point of state legislation on civil rights. Twenty-five states provide by law for fair employment practices, and most give enforcement power to a State

Commission.[10] Yet discrimination persists even in these states, not only in private employment but also in government jobs and in employment with government contractors. As two students of the subject recently emphasized (Bamberger and Lewin, *Administrative Enforcement of Antidiscrimination Legislation,* 74 Harvard Law Review 526, 531):

> "The need for affirmative commission action is indicated, to a certain extent, by the experience of the commissions to date. It is generally agreed that neither the type nor the number of complaints initiated by private parties is an accurate barometer of actual discrimination. Public accommodations are a notable example. Discrimination by motels, hotels, and restaurants often affects transients, who are disinclined to file formal complaints which would lead to the personal inconvenience of participation in proceedings from which they could not normally themselves benefit. Private complaints of discrimination with respect to promotions or pay increase are also comparatively rare. Despite the fact that most statutes provide that it is unlawful to discriminate against an individual because he has filed a complaint, employees are reluctant to jeopardize their existing positions or aggravate relations with employers for whom they wish to continue working."

Not only do personal reticence and lack of adequate information render the complaint system inadequate to eliminate employment discrimination, in many cases employment discrimination is the result of other forms of discrimination, such as restrictions on available housing or educational and vocational training opportunity, and there

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[10] Twenty states have passed fair employment practices laws which provide for enforcement by administrative agencies. These states are: Alaska (1953), California (1959), Colorado (1951, extended to private employment in 1957), Connecticut (1947), Delaware (1960), Illinois (1961), Kansas (1961), Massachusetts (1946), Michigan (1955), Minnesota (1955), Missouri (1961), New Jersey (1945), New Mexico (1949), New York (1945), Ohio (1959), Oregon (1949), Pennsylvania (1955), Rhode Island (1949), Washington (1949), and Wisconsin (1957).

Five states have passed laws against discrimination in employment which do not follow the pattern of fully enforceable FEP laws. Indiana and Nevada declare job discrimination to be against public policy and authorize a commission to investigate complaints, without power to issue cease and desist orders. Idaho, Arizona, and Nebraska seek to enforce their ban on employment discrimination by court action. In addition, about 40 cities have enacted local ordinances against discrimination in employment, such as Philadelphia, Pittsburgh, Minneapolis, St. Paul, Cleveland and Baltimore.

(Hartman, *Civil Rights and Minorities,* Anti-Defamation League of B'nai B'rith, Spring 1962.)

is in fact no potential complainant to invoke redress. Progress in overcoming employment discrimination, therefore, requires new and affirmative programs by the state executive. Perhaps the most important of these is in the area of the State Employment Service.

State Employment Service

These agencies daily handle hundreds of job applications and placements touching every area and industry within the state. Some State Employment Services refuse to handle discriminatory job orders;[11] but little *affirmative* use has yet been made of this vital state contact with employment practices in the general community. Moreover, many of the State Employment Services operate along geographical-district lines, which perpetuate a form of *de facto* discrimination.

Because of restricted housing for racial minorities, Negroes and other nonwhite citizens generally reside within small and discernible areas in certain of the state's localities. A system of job referrals which restricts minority group applicants for employment to their own residence districts furnishes a few employers with many minority applicants, while the great mass of employment applications from other districts of the state are filled by white residents of these districts. In most states this is precisely how the State Employment Service operates, because the system of "within-district" job orders and referrals has been found administratively convenient. The first requirement, then, for a larger state role in fair employment is a revised system which permits and encourages minority group applicants to be referred by the State Employment Service outside their residential districts. Such a system can operate along occupational rather than geographical lines, and it can undertake affirmative recruitment to eliminate *de facto* employment discrimination derived from existing housing segregation patterns.

Beyond a re-examination of the State Employment Service referral system lies a vast field of affirmative education, reporting and compliance enforcement open to these agencies. Today, the State Employ-

[11] The state executive need not, of course, await fair employment legislation to bar the State Employment Service from handling discriminatory orders. California Governor Warren issued an order to this effect in 1950, and many other Governors have since issued similar orders. State Employment Service handling of such orders was held a violation of the Fourteenth Amendment by the Kansas Court's decision of November 17, 1961, in *Pryor* v. *Poirer* (4 Race Relations Law Reporter [RRLR], Vanderbilt University School of Law, 1098). In August, 1961, the Employment Security Manual of the Bureau of Employment Security, U. S. Department of Labor, was revised to instruct all State Employment Services to refuse to accept discriminatory job orders.

ment Service generally resists acceptance of civil rights responsibility, leaving initiative in the hands of the State Civil Rights Commission. But a forceful executive can charge the Service with direct responsibility and bring it into a working relationship with the Fair Employment Commission. The Service, spread as it is throughout all the counties of the state, can become a vital source of fair employment education to applicants for employment who are uninformed of their rights, and to the employers within the district. The Service can be authorized to receive and transmit discrimination complaints to the Commission. And by a system of required compliance pledges from employers (or of referral *preference* for those who voluntarily sign pledges), the Service can promote a higher level of fair employment compliance.[12]

State Government Jobs

As much as the State Employment Service could achieve if affirmatively charged with civil rights obligations, even more can be done through a revitalized minority employment program in state government. Few state executive agencies would admit to discrimination in their employment practices. Yet, for a variety of reasons, many such agencies have hardly any minority group employees, and the promotion level of those employed in state jobs lags far behind that of white employees. The first and essential need is to supplement the piecemeal complaint system by a program of affirmative action. The first step in such a program should be the collection of information about existing patterns within state agencies. A Governor can properly begin with a census of all state agencies and departments, to determine the location, numbers and grades of minority group employees.[13]

Following the gathering of these necessary statistics, the state fair employment agency can be empowered by the Governor to review

[12] Another important area of controls is available to the executive in states which by statute forbid discrimination by business establishments. *Private* employment agencies can be reached in those jurisdictions, and firm controls imposed against their servicing of discriminatory employers. The Attorney General of New York in August of 1962 secured a judicial injunction against continuing violation by a private employment agency.

[13] The Governor of Indiana, through Executive Order No. 5 issued on December 12, 1961, directed a study of state employment practices with a view toward eliminating discrimination. A census of government departments was undertaken in Los Angeles County in the spring of 1962. The study covered 40,000 government employees in the county. As a result, 16 departments, where the statistical results tended to indicate possible discrimination, were ordered to review their selection processes, the utilization of minority group professional employees, and the system of departmental promotions, to eliminate any possible discrimination.

the hiring policies and practices of state agencies, including the state's Civil Service Commission, and to recommend needed reforms. It may be found that certain departments have been using antiquated hiring systems, and that special recruitment efforts among minority groups are needed to promote awareness of opportunities for qualified applicants.[14] Whatever remedies prove appropriate, no reason exists for continuing to restrict the scope of fair employment in state agencies to a system of individual complaints. It is clear that the state executive has the power to undertake affirmative hiring programs that will make every state agency a model of fair employment in action.[15]

State Contract Employment

The field of state contract employment presents great possibilities for forward strides, particularly in the construction trades where desirable employment has so long been closed to Negroes because of labor union discrimination.[16] Almost all of the Fair Employment Practices states have, in addition to the statutory requirement of nondiscrimination, a clause in every state contract prohibiting employment discrimination. Yet, despite large annual state disbursements for construction of roads, schools, hospitals, and public works, the contractual obligations are practically meaningless today for lack of policing and affirmative enforcement. Many state contractors hire through established building craft unions, and many of these in turn bar minorities from union membership and from the apprenticeship programs which are prerequisites to accreditation in the skill.

The remedy lies in affirmative programs under the responsibility and supervision of the state's contracting agencies—the Commissioners of Highways, Education, Health, etc.—to effect reforms in hiring through the leverage of the existing contract provisions.[17] Programs of

[11] In July of 1955 the Los Angeles City Civil Service Commission required all applicants for municipal employment to pledge that they will willingly work with or for any associates regardless of race, color, or creed.

[15] On January 16, 1962, Governor Barron of West Virginia issued an executive order banning discrimination in state employment. The order states, in part: *"It is the plain and positive obligation of the government of West Virginia to promote and insure the equal opportunity for all qualified persons, without regard to race, creed, color or national origin, employed or seeking employment with the State of West Virginia."* (First Annual Report, West Virginia Human Rights Commission, December 1, 1962.)

[16] See 1961 Report on Employment of the United States Commission on Civil Rights.

[17] The Governor of Indiana, in the previously mentioned Executive Order No. 5, directed state agencies which contract or purchase on behalf of the state to include nondiscrimination clauses in all agreements (7 RRLR 624).

inspection, reporting and compliance have recently been initiated by the Federal Government, particularly in the Department of Defense,[18] and by some of the states.

In Michigan, for example, the Governor recently created a committee composed of a representative of the Fair Employment Commission, of the Commissioner of Highways, and of the Governor. Through this informal committee, fair employment reporting and compliance were integrated into the state highway program. Contractors with the state are asked to obtain *affidavits of compliance* from the unions through which they hire. Unions that cannot certify that they do not discriminate in the availability of their apprenticeship programs and union membership become ineligible for contract performance unless they show a program of reform. By such means, fair employment obligation in state contracts is no longer relegated to the individual complaint system. Rather, the affirmative obligation of reporting and compliance is placed upon the contractors and the building craft unions with which they deal. Thus the state exerts the leverage of its contract power to advance throughout the community the concept of fair employment.

Much remains to be done to make fair employment a reality in our states. Vested economic interests and ancient prejudice among employers, workers, and unions stand in the way. But the state's leverage over employment policy is manifold. Fair Employment Commissions, the State Employment Service, government job recruitment and training programs, and compliance reporting on state contracts can achieve significant progress.

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[18] The programs adopted by the Federal military procurement agencies incorporate new affirmative action concepts. The main thrust is toward creating opportunities to help minority individuals qualify for employment. Previous efforts on a Federal, state, and municipal level have been complaint-oriented. The burden is now on industry and government contracting agencies to comply affirmatively with the Order.

Another innovation is the separation of the operational function of complaint handling from affirmative action, thereby further reinforcing the affirmative action thrust. The structure for the program has been integrated into existing procurement procedures in such a way that it can expedite rather than hamper procurement.

Responsibility for implementation of the equal employment opportunity program is placed on the top echelon of military procurement officers in each service, thereby stressing the importance of the program and its high level auspices. Staff assistance is given these military officers through specialized intergroup relations personnel, who are experts in the field of fair employment practices.

Office of Education-EEOP
Research and Materials Branch

HOUSING

The recent Presidential order against Federal supports to discrimination in housing points to the field where new approaches are needed most. Unlike employment and education, in which legal sanctions and changing community attitudes have produced reforms in recent decades, housing discrimination has steadily increased with the burgeoning of the suburbs surrounding our great metropolitan areas. Today there is a "white noose" of suburban housing which circles most of our cities, with nonwhite residents restricted to clearly delimited areas in the central city.

In the face of this growing social problem, many states and communities have enacted statutes and ordinances prohibiting discrimination in private as well as publicly-assisted housing. However, the purchaser of a home must ordinarily obtain the approval not only of a seller, but the assistance of a realtor and a lender, and most realtors simply do not show Negroes available housing in the "all-white" areas. Even if shown housing, the minority purchaser may be denied financing by a lending institution; the owner may refuse to sell or may make the purchase price exorbitant in order to avoid a sale or to capitalize on the restricted housing market to nonwhite purchasers. In the maze of multiple parties and conditions involved in the acquisition of a home, discrimination is difficult to prove and uproot solely on the basis of individual complaint.[19]

The ultimate solution to the urgent problem of housing discrimination requires affirmative governmental programs of regulation of the housing and home finance process. Such governmental program must recognize the prevailing "understandings" between the major participants in the housing market and require showing by realtors,

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[19] This is the conclusion in a 1961 monograph by two housing experts with the New York State Commission Against Discrimination—Edward Rutledge and William R. Valentine: "The inadequacy of these methods (complaint settlement and public education) for dealing with the complex and often elusive problems of the housing field have made innovation and trailblazing necessary. The need has been all the more compelling, moreover, because of the patterns of discrimination and segregation that have been developed and strengthened over a period of years, becoming fixed in the attitudes of the public and the building industry . . . the number of complaints filed is no measure of the incidence of housing discrimination and segregation. Eloquent testimony supporting this assertion is provided in the recent reports of the Commission on Race and Housing, the Hearings of the U. S. Civil Rights Commission and surveys of local and state commissions against discrimination. Logic and realism therefore argue cogently the need for means of achieving agreements for voluntary compliance with the law."

lenders, sellers and developers of good faith efforts to achieve open occupancy housing.[20]

Realtors

Housing discrimination reforms are inevitably concerned with the realtors involved in the initial step of advertising and showing properties for sale. The most significant step yet taken in this direction is "Rule 9," promulgated in August of 1960 by the Corporation and Securities Commission of Michigan.[21] In Michigan, the legislature has not enacted any law with respect to housing discrimination, but the Commissioner deemed realtor refusal to serve Negro customers to be contrary to the accepted obligations of the profession. Accordingly, the grant and renewal of licenses for realtors was conditioned by Rule 9 on broker nondiscrimination. California reached a similar result under the aegis of the state's statute relating to nondiscrimination by "business establishments," which was deemed by an Attorney General's ruling in 1960 to include the realty business (see 5 RRLR 249).[22]

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[20] Because restrictions of the housing market to Caucasian buyers usually results from agreements or understandings between powerful elements among lenders, realtors and builders, considerable interest has recently been focused on the anti-trust ramifications of discrimination in housing. Since conspiracies in restraint of trade violate the anti-trust laws of the several states, the Attorney General's department may have an important role to play in promoting desegregation in the housing market through litigation. The elimination of housing discrimination also requires greater awareness of the obligation of nondiscrimination among those involved in the sale of housing. The New York State Commission for Human Rights, in General Regulation No. 3, has promulgated requirements for the posting of notices of nondiscrimination at real estate offices, at sites of commercial space, at lending institutions, and at the housing accommodations themselves.

[21] (R 501.309) "9. A broker or salesman, acting individually or jointly with others, shall not refuse to sell or offer for sale, or to buy or offer to buy, or to appraise, or to list, or to negotiate the purchase, sale, exchange or mortgage of real estate, or to negotiate for the construction of buildings thereon, or to lease or offer for lease, or to rent or offer for rent, any real estate or the improvements thereon, or any other service performed as broker or salesman, because of the race, color, religion, national origin or ancestry of any person or persons.

"A broker or salesman, acting individually or jointly with others, shall not refuse to sell or offer to sell, or to buy or offer to buy, or to receive an offer to sell or to buy, or to lease or offer for lease, or to negotiate the purchase, sale or exchange of a business, business opportunity, or the good will of an existing business, or any other service performed as broker or salesman, because of the race, color, religion, or national origin, or ancestry of any person or persons."

At the time of publication, the legality of Rule 9 was under litigation in the Michigan courts.

[22] In 1962, California's Attorney General ruled that "a local realty board may not exclude from membership a licensed and otherwise qualified applicant solely on the

In November 1959, the Attorney General of Massachusetts construed that state's public accommodation statute to preclude racial discrimination by real estate agents in accepting bookings, even though the property involved was not of a type specifically mentioned in that state's housing law (see 5 RRLR 253). The rationale of the ruling was that a real estate agency is a place of public accommodation, offering services or facilities or goods to the general public, within the meaning of the state's Public Accommodation Act. Similar rulings were issued in 1955 by the Connecticut Commission on Civil Rights and in 1960 by the Attorney General of Oregon.

While some states may be unwilling to initiate general housing nondiscrimination policies enforceable through realtor license controls, there are intermediate provisions which may still accomplish much progress. For instance, in those jurisdictions where the legislature has already prescribed discrimination in publicly-assisted or private housing, it would appear proper for the state authorities controlling realtor licenses to condition license grant and renewal at least upon realtor compliance with existing statutory requirements. Realtors who become parties to restrictive practices in the fields where the legislature has forbidden discrimination should not continue to receive the state's licensing authorization.

Moreover, significant areas of realtor discrimination are subject to license controls quite apart from strictly civil rights requirements. Thus, it has long been deemed antithetical to a realtor's obligation for the agent to apply restriction to the selection of a buyer which the seller himself has not required or approved. Yet in the greatest number of cases, it is not the seller who instructs, but the agent who assumes restriction of the sale to a white buyer. State authorities who forbid such agent discrimination are applying accepted principles of business ethics and traditional rules of agency.

Similarly, "blockbusting" techniques, whereby unscrupulous agents use scare tactics to turn white or principally white areas into all-Negro housing areas for their own profit, may be prohibited as antithetical to a realtor's public obligations. Rule 17, adopted by the Secretary of

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grounds of color, race, religion, ancestry or national origin." In citing the reasons for his ruling, the Attorney General said that "in view of the power of such realty boards and the public interest in their activities, the impact both economically and professionally on those excluded from membership, and the fact that discriminatory practices bear no relation to the legitimate ends and purposes for which realty boards are organized, discriminatory practices may be prohibited by the courts even in the absence of express legislation." (*Trends in Housing*, published by the National Committee Against Discrimination in Housing, Vol. VI, No. 5, Sept.-Oct. 1962, p. 2.)

State of New York in June, 1961, proscribes such scare practices and conditions license renewal on compliance. To the same effect are "panic selling" prohibitions adopted in May, 1961 by the Pennsylvania Real Estate Commission, on the ground that panic selling constitutes "incompetency" or "bad faith" by the broker.[23]

Lenders

Also significant are lender practices. On November 2, 1959, prior to the state law banning private housing discrimination, the State Banking Department in New York declared discrimination against loan applicants on the basis of race a violation of the obligation of lending institutions.[24] But once again, policy declaration must be supplemented by inspection and control. Lending institutions might, for example, be required to report all applications from minority group members and to explain rejections in such cases.

Builders-Sellers

Finally, controls are required on sellers, and particularly on large builder-developers whose initial practices in the sale of multiple dwell-

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[23] The New York rule provides that: "No broker or salesman shall solicit the sale, lease, or the listing for sale or lease, of residential property on the ground of loss of value due to the present or prospective entry into the neighborhood of a person or persons of another race, religion or ethnic origin, nor shall he distribute or cause to be distributed material or make statements designed to induce a residential property owner to sell or lease his property due to such change in the neighborhood."

The same position with respect to panic selling as taken by the New York and Pennsylvania orders has recently been taken in Connecticut by the Insurance Commissioner, who is the licensing authority for brokers, and in Illinois by the Department of Registration and Education.

[24] In "Supervisory Circular Letter General No. 6", the Department advised lenders that "It has come to the attention of this Department that various lending institutions have been dealing with applications for extension of credit, both secured and unsecured, upon the basis of the race, creed, color, or national origin of the applicant, including the practice of coding applications to reveal such information. In these cases, correlation of the applications and their disposition by the lending institutions indicates no consistent or rational policy as to treatment of the applicants concerned other than on the basis referred to. Action upon applications for extension of credit should be governed solely by the financial ability and the responsibility of the applicant, and without regard to the applicant's race, creed, color, or national origin."

The California State Superintendent of Banks, on September 14, 1960, issued a letter to the president and board directors of all state banks, calling attention to the 1959 legislative enactment which prohibits the denial because of race, religion or national origin of equal accommodations to persons by all business establishments. The letter quotes a statement from the Attorney General's office to the effect that a number of complaints have been received by that office, alleging that various lending agencies in the state had been discriminating because of race or nationality against applicants for credit, particularly for mortgage loans.

ing "communities" tend to establish subsequent housing practices in the area. In the case of such developers, the state has a multiplicity of controls in matters of zoning, financing, and construction. The President of the United States has recently issued an Executive Order governing nondiscrimination in Federally-assisted housing. No reason appears why executive officials in the states should not promulgate similar policy to be enforced by even more direct state controls over builders and sellers.

Publicly-Assisted Housing

With respect to publicly-assisted housing, such as public housing and urban renewal, efforts to eliminate discrimination have made much headway outside the south. But these programs offer further unrealized opportunity for reducing existing segregated housing patterns. On May 22, 1962, New York State took an important forward step in this area by executive action. The State Commissioner of Housing announced that financing would henceforth be limited to those urban renewal projects which are *planned to advance integration in the community*. By such affirmative policies, state officials can more effectively achieve progress through application of housing assistance controls.[25]

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[25] Important constitutional questions arise, of course, regarding discrimination in *any* state-assisted housing programs. In an opinion issued by the Attorney General of California on July 1, 1959, it was ruled that under the state's Redevelopment Law, private landlords who deny minority group tenants cannot, consistent with the Fourteenth Amendment, receive listing services in the urban renewal program. A 1959 judicial ruling to like effect was that of a lower California Court in *Ming* v. *Horgan*, Sup. Ct. Sacramento Co. (3 RRLR 693). In January 1961, the Attorney General of California ruled that state agencies could not, consistent with the Federal Constitution, acquire and pass title to property (in the State Veterans Housing Program) containing racially restrictive covenants.

The New York City Department of Welfare has announced a policy of requiring elimination of racial exclusion in private nursing homes eligible to receive public welfare referrals. This policy is effected by refusing to refer the recipients of public assistance to private nursing homes which practice discrimination. The policy was set out in a letter of December 12, 1956, from the Commissioner of the Department of Welfare to the President of the New York City Nursing Home Association.

The Director of the Colorado Antidiscrimination Commission expressed opinions that student rooming houses and boarding houses, whether operated by the State University or by private enterprise, are places of public accommodation, under the terms of the Colorado Act, and that the State University might be cited for violation if it should list or refer students to houses which practice racial discrimination. This position was adopted in a statement of the Board of Regents (5 RRLR 281). See also, Edward Rutledge, *Housing Bias in the College Community*, NAIRO Journal, National Association of Intergroup Relations Officials, Autumn 1960.

Many costly years will elapse before our states and localities will achieve completely nondiscriminatory housing practices unless government officials undertake without delay vigorous, affirmative programs of reform, backed by meaningful sanctions against violators. Just as experience has shown that business employers can be educated to fair employment obligations, so, too, builders, lending institutions, and realtors can be induced to observe fair practice requirements. As in other fields of racial reform, the business community and private individuals will respond to governmental leadership if state officials are forthright in their espousal of the democratic requirement that no prospective purchaser of a home shall be denied equal opportunity by reason of his race, creed, color, or national origin.

EDUCATION

The historic 1954 Supreme Court decision striking down segregation in public schools emphasized the importance of establishing the habits of democratic behavior in the formative years of an individual's development. Government has a unique responsibility and opportunity in this regard, because traditionally state officials have had direct authority in setting standards in education, both public and private.

The first obligation of state authorities is to eradicate any remaining public school segregation created by sanction of state law or practice. Millions of Negro children in the south are still denied desegregated public schooling by officials who disregard this Constitutional requirement, and recent litigation in certain northern communities indicates that these violations are not limited to the south alone. (See *Clemens* v. *Board of Education, Hillsboro, Ohio,* 228 F. 2d 853; *Taylor* v. *Board of Education of New Rochelle, New York,* 191 F. Supp. 181.)[26]

But executive responsibility does not end with the elimination of government-imposed segregation in public education. Executive offi-

[26] A serious problem in some northern schools concerns incidental facilities such as athletics and fraternities. The California Attorney General ruled on September 17, 1959, that swimming team arrangements barring Negro public school students from access to school-sponsored and supported athletic activities (at a private, segregated pool) violated the equal protection clause of the Fourteenth Amendment.

A resolution approved by the California State Board of Education on November 6, 1959, and incorporated in that state's Administrative Code as Title 5, Education, Sections 954.6 through 954.9, prohibits state colleges from recognizing any fraternity, sorority, living group, honor society, or other student organization which restricts membership on the basis of race, religion, or national origin. A similar policy was adopted by the Trustees of the University of Massachusetts on January 12, 1957.

cials aware of their Constitutional responsibilities must also be concerned with *de facto* public school segregation resulting from past discriminatory practices or prevailing restrictions in the availability of housing for minorities. They should likewise move affirmatively to eradicate educational disadvantages for minorities which flow from segregation in private educational institutions that derive benefits from the state.

De Facto Public School Segregation

The Report on Education published in 1961 by the United States Commission on Civil Rights underlines the degree of *de facto* segregation in public schools in the north and west, resulting from prevailing patterns of housing segregation in our urban and suburban communities. The available data indicate that public schools with over 80%, 90%, and in some cases 100% nonwhite enrollment, are to be found in Boston, Chicago, Cleveland, Detroit, Indianapolis, Los Angeles, New York, Pittsburgh, and other major urban centers.

De facto segregation may not be purposeful, although frequently school district boundaries have been shifted as neighborhoods have undergone racial changes. But this is of small moment to both Negro and white children thus denied association during their formative school years. The human effect of such *de facto* segregation is as damaging as that of purposeful segregation. It is the responsibility of state authorities charged with the obligation of promoting maximum educational opportunity to reduce public school segregation, whatever may be its cause.[27]

This responsibility is increasingly being recognized. Communities which have adopted effective programs to reduce *de facto* public school segregation have moved along three complementary and related avenues of reform: *promulgation of policy, compilation of prevailing facts,* and *creation of affirmative desegregation procedures.* Typical of policy promulgation is the pronouncement of the New York State Board of Regents on January 28, 1960 (see Appendix D), and the

[27] In a decision handed down on April 9, 1962, in *Branche* v. *Board of Education of the Town of Hempstead School District No. 1,* 204 F. Supp. 150, District Judge Dooling said, "Segregated education is inadequate and when that inadequacy is attributable to state action, it is a deprivation of constitutional right." The key language of his decision is as follows: "The central constitutional fact is the inadequacy of segregated education. That it is not coerced by direct action of an arm of the state cannot, alone, be decisive of the issue of deprivation of constitutional right . . . The educational system that is thus compulsory and publicly afforded must deal with the inadequacy arising from adventitious segregation; it cannot accept and indurate segregation on the ground that it is not coerced or planned but accepted."

resolution of the California State Board of Education of January 14, 1962 (see Appendix E). The New York Board of Regents declares that *de facto* segregation "may damage the personality of minority group children" and "impair the ability to learn."

Following such general policy pronouncement, it has been found important to have a general survey to determine the existing degree of *de facto* segregation in public schools. In 1961, the New York Commissioner of Education ordered such a census to determine racial composition in every school, grade, and classroom. Such a census is not, of course, an invidious mark of racial differentiation, but rather the factual basis for affirmative action against *de facto* school segregation.

Finally, affirmative action programs are required to alleviate existing racial concentrations in public schools. Such programs imply a careful review of school location practices. Too often existing segregation is perpetuated by constructing new schools in the centers of highest racial concentration. The California State Board of Education on October 12, 1962, followed up its policy resolution by enacting three regulations designed to encourage local school districts to consider ethnic factors when drawing school boundary lines, choosing school sites, and organizing unified school districts.

In addition, free transfer policies may be adopted to permit nonwhite children the option of attendance at schools farther from their homes, where Negro concentrations do not prevail. Such programs have been instituted in Washington, D. C., Baltimore, Oklahoma City, Louisville, and elsewhere. In New York City, free transportation is provided under the transfer-option system to children who elect to attend schools more than one mile from their residence. Still other communities have followed the "Princeton Plan," under which all-white and all-Negro schools are revamped, with exchange of student populations for particular grades, years, or classes.

Of course, in many communities the ultimate power over school assignment rests with local boards and authorities over which the state government may lack compulsory authority. Yet experience shows that local school boards are responsive to leadership from the top. A State Board of Regents and a State Commissioner of Education, by promulgating policy, ordering a census, and reviewing new school location authorizations, may induce local boards to follow suit and undertake progressive programs to alleviate *de facto* segregation in the public schools under their control. Once the will to alleviate *de facto* segregation is instilled in responsible executive officials, means

come readily to hand for accomplishing the objective by combinations of school location, exchange, and transfer-option plans best suited to the particular community.

Cultural Gap in Education

Segregation in the public schools is only one of the racial disadvantages from which minority group children suffer. As serious as the segregated and often unequal facilities provided to Negro public school children is the lack of learning receptivity these children bring to their schools from their stultifying cultural environment, the product of multiple and continuing deprivations. Studies have shown that as early as the first grade, Negro and other minority group children are retarded by as much as one or two years in reading readiness as a result of the restricted opportunity in the environment in which they live and mature. Any school system which attempts to increase the learning receptivity of its school children must become aware of and deal with this cultural gap, recognizing that it is not inherent but derives from other forms of racial discrimination and segregation to which minority families are subjected in such areas as housing and employment.

A number of remedial programs for closing the cultural gap have recently been tested with encouraging success in such communities as St. Louis, New York City, Oak Park (Michigan), and New Orleans. These are described in the 1961 Report on Education of the United States Commission on Civil Rights (pp. 98-137). Some of the programs are addressed to the early grammar school years and others to as late as the summer following high school graduation. Some seek to identify the gifted but culturally-deprived children in order to give them exceptional learning opportunities and stimulation in both the school and the home. Other programs recognize the need for supplemental education for an entire school population in an under-privileged area with a high nonwhite concentration.

Experience may show some or all of these approaches to be useful in particular school areas. But whatever means are chosen, it is essential that in the first instance school authorities forthrightly recognize the problem of the cultural gap and move affirmatively toward its alleviation. Generally, private funds and facilities have been available to aid government authorities who have sought assistance in this important effort. It has also been found that the total community benefits from such a positive educational program, since it tends to

raise the achievement level of all public school children in the locality by creating greater awareness of individual needs.

Segregated Private Institutions

Executive officials have primary responsibility for the operation of public schools, but state responsibility has long been recognized also with respect to private education. The state's responsibility is particularly great in higher and vocational education, where public facilities may be inadequate to serve all, and many must seek admission to private schools licensed by the state to provide a general or specialized education. Moreover, private higher educational institutions have been receiving mounting state aid and assistance. They are increasingly the beneficiaries of governmental research and other programs of importance to their successful operation. The Federal Government alone dispenses some two billion dollars annually in various forms of assistance to higher education, and the total state programs are many times greater than this.

By virtue of the vital functions for which private educational institutions are chartered and licensed by the state and given its support and encouragement, there arises the responsibility of state officials to eliminate discriminatory admissions practices in such institutions. Thus, in 1961, the United States Commission on Civil Rights recommended that all Federal programs and assistance be withdrawn from institutions of higher education which continue to bar minority students. Similar action is open to state executive officials empowered to disburse state assistance to private educational institutions.[28]

Especially in those states where segregation in private education is already forbidden by legislation, there is room for affirmative programs of inspection and compliance through the applicable licensing authorities of the state. Too often in such states, legal requirements have not been translated into reality, particularly in vocational education programs such as nurses' training and apprenticeship training in building trades. Often, the state is involved at every point in these programs. An example is the state financing of apprenticeship programs without any controls on admission to the programs. A forth-

[28] State officials who would thus promote desegregation in higher education will rarely have to withdraw funds or assistance. Voluntary compliance agreements will be readily executed by university officials who are sensitized to the possibility that state assistance would otherwise be withdrawn, or that a competing institution with a record of fair admissions practices would be preferred in the award of governmental grants and assistance.

right declaration from licensing and disbursing authorities that such institutions must show compliance with legal requirements of equal opportunity as a condition of license renewal and continued state aid would go far toward eliminating discrimination in education and training.[29]

Even the most vigorous application of fair employment laws cannot produce equal employment for minorities denied the required education and training. A state administration which would give meaning to the equal employment guarantee must also direct its attention to the problem of professional and vocational training. A complete program to this end implies the steps reviewed above, including the eradication of vestiges of public school segregation, the closing of the cultural gap, and the assurance of fair admissions policies at private institutions licensed to provide accredited training in skills and professions. Through such a program, a state administration can promote true equality in education and concurrently give increased impetus to the realization of equal opportunity for employment and livelihood.

PUBLIC ACCOMMODATIONS

Recent years have seen advancing desegregation in public accommodations. Most metropolitan hotels, motels, barber shops, restaurants and hospitals in northern and western areas have accepted the principle of nondiscriminatory service. Progress has not been limited to the states which have statutory public accommodation requirements of equal service. Indeed, the recent protest movement has achieved public accommodations desegregation even in southern states still committed to the official practice of segregation.

But this commendable progress should not obscure the continuing nationwide discriminatory practices of some public accommodations in bigger cities—particularly in hospitals—or the relative lack of prog-

[29] In June, 1956, the Detroit Mayor's Interracial Committee made the following recommendations with respect to college nurse's training: (1) That a formal statement of policy of nondiscrimination be made explicit and a matter of public record. (2) That a systematic review of the recruiting, selection, admission, residence and hospital affiliations techniques be made to discover and eliminate obstacles to the effective operation of a nondiscriminatory policy. (3) That the school give special attention to any mis-information found to exist in the public mind which operates to restrict the number of students, either white or Negro, who seek to embark upon a nursing career. (4) That the high school counseling programs be utilized to acquaint students and teachers with the standards for admission as well as with the opportunities for all girls in the college nursing programs.

ress in resorts, inns and rural facilities.[30] Even the existence of penal statutes forbidding discrimination in public accommodations (only 10 states provide for Commission enforcement) has had little effect upon discrimination in accommodations in rural and resort areas.[31] An effective program of desegregation in public accommodations, and particularly in resort facilities, should look to controls in the areas of state assistance, governmental licensing, and executive persuasion. States which have in fact pursued these avenues of progress in public accommodations practices have reported considerable success.

State Assistance

A principal form of state assistance to public accommodations is the services of the state tourist and travel bureaus. The state should decline such supporting services to proprietors who violate the state's statutory or executive policy against discrimination.[32] But state tourist and travel service facilities can also provide affirmative education and support for the public policy, through their contacts with the public accommodation proprietors and through their literature and information services.

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[30] In June, 1956, the Detroit Mayor's Interracial Committee made the following recommendations with reference to the nonracial utilization of hospital facilities: (1) Governing boards of hospitals take steps to see that the staff is representative of all professionally qualified doctors practicing in the community, and review patient admission practice and bed utilization policy, to determine if procedures are followed which guarantee that equal accommodation without discrimination or segregation is available to all patients. (2) That prior to the distribution of funds to any hospital, that hospital be required to demonstrate that race will not be a factor in the selection of the medical and nursing staff or in the utilization of beds and other services in the hospital. (3) That the community's pre-payment plans for hospital care ensure equal accommodation to all people in the community without regard to race. (4) That the hospital council, medical society, and hospital trustees undertake to promote a common standard of staff membership and bed assignment practice among the member hospitals, and that they undertake the responsibility for an educational campaign regarding non-racial community standards in hospitals.

[31] See Comments p. 57 and p. 70 of the proceedings of the Conference on Civil Rights convened on April 4, 1960, in Madison, Wisconsin by Governor Gaylord Nelson.

[32] In May of 1956, the director of the Vermont Development Commission requested an opinion of the Attorney General of that state with respect to the deletion of names of hotels and related places of public accommodation from various state listings, where it had been established that such places practiced racial discrimination. The Attorney General's opinion expressed the view that discrimination on the basis of race by places of public accommodation was violative of the common law relating to innkeepers, as well as inconsistent with the principles of both the Federal and state constitutions.

For instance, the Ohio Turnpike Authority obtained pledges of nondiscrimination from proprietors adjacent to the highway exits, and the fact of their compliance is specifically noted in the materials furnished to Turnpike travelers. Similar pledge requirements have been applied to proprietors using the facilities of New York's Tourist Bureau.

State Licensing Authority

Even more direct controls are available to state licensing authorities, who can inspect for compliance with the public policy, require reasonable compliance as a condition of license renewal, and enforce the public posting of compliance notices at the premises.[33] Thus, in a number of states, barber shops have been required to post compliance notices. In California, the Alcoholic Beverage Control Board has warned taverns that their licenses are jeopardized by racial discrimination in service. Similar rulings have been found effective when issued by licensing authorities in the area of banking, transportation, and various other public accommodations and facilities.

Executive Persuasive Power

Finally, the executive has significant persuasive power in the public accommodations field, where discrimination is economically expensive and ever less socially acceptable as a pattern of commercial behavior. Recently, members of the Federal Cabinet have been instructed by the President not to appear at segregated meetings. A state executive can similarly instruct his subordinates, with equally significant effect upon the community conscience and practice. Moreover, many public accommodations and facilities cater from time to time to governmental activities and meetings. Such accommodations are the more likely to reconsider their discriminatory policy if state agencies decline to use segregated facilities.[34]

[33] The Attorney General of Michigan was asked for an opinion as to whether the provision of the Michigan Public Acts of 1956 prohibiting discrimination on the basis of race, color or religion in places of public accommodation, which permits the revocation of licenses of violators, is constitutional. In an opinion of July 23, 1956, the Attorney General stated that such a penalty was within the reasonable exercise of the police power of the state.

[34] On December 28, 1956, the Chairman of the New York City Commission on Intergroup Relations recommended to the City Council that facilities of the New York Athletic Club not be used by the Council for publicly sponsored occasions. The request arose from charges of racial and religious discrimination practiced by the Club. In June, 1960, the California Attorney General informed all municipalities in the state that a racial restriction on membership in the Professional Golfers' Association precludes all governmental agencies from extending special privileges or opportunities to the Association or to individuals as members of the Association.

The persuasive power of the executive is materially increased when it is brought to bear simultaneously upon leading members of the public accommodations industry.[35] Personal representations from the Governor to hotel, motel, and resort owners can prompt significant reforms by those proprietors who fear becoming isolated leaders of reform but who willingly join in simultaneous desegregation with others in their economic community.[36] By projecting the possibility that state licensing and assistance will be discontinued to violators, the Governor can increase the chances of successfully negotiating general desegregation of public accommodations and facilities.

Discrimination against racial minorities is not limited to employment, housing, education and public accommodations. But they are of most immediate concern, for discrimination in these four areas has the most immediate impact upon the individual citizens who are its victims. The discussion has not sought to be exhaustive within these fields, but only illustrative of those affirmative programs which give promise of accelerating the pace of desegregation.[37]

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[35] "Operation Motel" in Wisconsin is an impressive measure of the value of proprietor education programs. See Proceedings of the Conference on Civil Rights convened by Governor Gaylord Nelson on April 4, 1960, pp. 57 et seq.

[36] A 1955 survey of various types of public accommodation establishments by the Maryland Commission on Interracial Problems and Relations showed that 97% of Maryland's theaters were segregated. In subsequent discussions with the theater operators, the Commission found that they were convinced that residents of their respective areas all opposed integration, and the individual operator feared that if he took the initiative in admitting Negro patrons, he would lose business. However, the operators felt that if all theaters were desegregated simultaneously, no one particular theater would suffer. (Report of Maryland Commission on Interracial Problems and Relations, January, 1957).

[37] State executives desiring to implement fully their civil rights obligations could beneficially consider the entire range of state programs which may touch upon or affect prevailing discriminatory practices. For instance, the welfare programs of many communities provide substantial governmental assistance, either through direct funds or listing services, for hospitals, nursing homes, child care institutions, schools, etc. Removal of state support to segregated institutions presently receiving assistance through welfare programs can provide a large measure of governmental incentive towards abandonment of discrimination in such private institutions.

Another important area of continuing discrimination is police practices regarding minorities, including minority employment with the state police. Police misconduct toward racial minorities is a perennial problem in many jurisdictions. A sound remedial program will require special police training programs on race relations in law enforcement, and the recruitment of minority group police officers.

There can be no doubt that the programs suggested are within the authority of the state executive. A review of the applicable legal authorities makes it clear that executive support for racial discrimination, whether within government or within the private sector, has no sanction in law. On the contrary, it is forbidden by the clear mandate of the Federal Constitution and equally by the civil rights requirements of many state laws and constitutions. Following is an examination of the sources of legal authority for executive promotion of civil rights.

PART THREE

The Legal Foundations of Executive Authority to Promote Civil Rights

THE FOURTEENTH AMENDMENT to the Federal Constitution prohibits states from denying equal protection of the law to any person. As long ago as 1880, the United States Supreme Court ruled that the Amendment's prohibition of racial discrimination applies not only to the legislative action of the state but equally to the acts of its executive officials.[38] Thus, for Constitutional purposes, it does not matter whether racial discrimination is being practiced by a state official because of a legislative requirement, in the face of a legislative prohibition, or simply on his own authority—in each instance, the Fourteenth Amendment prohibits the discrimination.

Doctrine of "State Involvement"

It has long been recognized that executive officials, like legislators and judges, are charged with the Constitutional prohibition against racial discrimination. But most of the early civil rights cases involved discrimination required by state statutes. Beginning in the early 1940s, however, the Supreme Court was called upon to resolve a series of challenges, not to discriminatory state legislation, but to forms of state involvement in or state support of "private" practices of discrimination. From these cases there has emerged the Constitutional principle of direct concern to state executive officials—the rule which invokes the prohibition of the Fourteenth Amendment *whenever "to*

[38] *Virginia* v. *Rives,* 100 U.S. 313; *Ex Parte Virginia,* 100 U.S. 339.

some significant extent the state in any of its manifestations has been found to have become involved" in private acts of racial discrimination. From the Constitutional prohibition on state involvement in or state support of discrimination, there directly emerges executive authority to withdraw public supports to discriminators and to condition all forms of public grant, contract, and assistance upon nondiscrimination by its recipients.

How did this doctrine of "state involvement" develop? The first intimation from the Supreme Court that the Fourteenth Amendment forbids not only governmental discrimination but also governmental support of "private" discrimination appeared in the celebrated voting cases: *Nixon* v. *Herndon,* 273 U.S. 536; *Nixon* v. *Condon,* 286 U.S. 73; and *Smith* v. *Allwright,* 321 U.S. 649.[39] There, the Supreme Court looked beneath the apparent distinction between the process of holding public elections and the "private" political primaries for the choice of party candidates. It ruled that the primaries were integral to the election process and so came under the Constitutional prohibitions on discrimination against Negro voters.

In 1944, in *Steele* v. *Louisville & Nashville Railroad,* 323 U.S. 192, the Court went farther. It held that private persons not necessarily exercising governmental functions but merely enjoying governmental support were barred from racial discrimination in exercising the supported powers. The Court ruled that labor unions enjoying exclusive bargaining power for a craft or class of workers pursuant to Federal statute were barred from signing contracts with employers which discriminated against Negro workers. The Court recognized in its decision the important principle that when government has its "thumb on the scales," by lending its aid to private parties, then the requirement of equal treatment becomes as applicable to the "private" conduct as it is to that of government officials.[40]

The prohibition upon discrimination which the Court applied in these early decisions to governmentally involved or assisted political parties and unions has subsequently been applied in the areas of contracts, transportation, education, and licensed enterprises. In 1948, there came to the Supreme Court the question whether a state could

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[39] See also *Terry* v. *Adams,* 345 U.S. 461.

[40] As Chief Justice Vinson explained in *American Communications Ass'n* v. *Douds,* 339 U.S. 382, 401: "when authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." See also *Brotherhood of Railroad Trainmen* v. *Howard,* 343 U.S. 768.

lend its support to "private" contractual covenants between a seller and a buyer of property, requiring racial discrimination in subsequent sales. It was ruled that the state could not judicially enforce such private covenants to discriminate, either by injunction (*Shelley* v. *Kraemer,* 334, U.S. 1) or by granting damages for violations (*Barrows* v. *Jackson,* 346 U.S. 249).

In 1950, in *Henderson* v. *United States,* 339 U.S. 816, the Court was presented with a challenge to segregated dining car accommodations on railroads subject to the Interstate Commerce Act. The Court struck down racial segregation, because railroads are subject to a general statutory requirement of equal treatment.[41] More recently, the Supreme Court has been called upon to rule on whether a state, through its officials, can become involved in or support racial segregation in private educational institutions. In the case of *Pennsylvania* v. *Board of Trustees,* 353 U.S. 230, the Court affirmed a ruling that the Constitutional prohibition on segregation applied where Philadelphia public officials participated as trustees in administering a segregated private school established and financed by private funds.[42] And in *Cooper* v. *Aaron,* 358 U.S. 1, 19, the celebrated case involving attempts to avoid desegregation of public schools in Little Rock, the Court warned that the Fourteenth Amendment prohibition would follow any attempt to practice racial discrimination in private schools supported by public funds. The Court ruled that "state participation through any arrangement, management, funds or property" would invoke Fourteenth Amendment prohibitions.

In its most recent applicable decision, in 1961—*Burton* v. *Wilmington Parking Authority,* 365 U.S. 715, 722—the Court again ruled against restrictive racial practices at a publicly-supported establishment, this time a private restaurant licensed to operate in a government building.[43] The Court affirmed the applicability of the equal protection clause whenever "the state in any of its manifestations has been found to have become involved" in private racial discrimination. The Court expressly pointed out (p.725) that the officials of the State of Delaware had Constitutional authority to condition the state's

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[41] The same principle was later extended to restaurateur-lessees from carriers at interstate terminals, in *Boynton* v. *Virginia,* 364 U.S. 454.

[42] See also *Kerr* v. *Enoch Pratt Free Library,* 149 F. 2d 212, cert. den. 326 U.S. 721.

[43] See also concurrence by Justice Douglas in *Garner* v. *Louisiana,* 368 U.S. 157, 183: *Muir* v. *Louisville Park Theatrical Association,* 347 U.S. 971.

granting of a franchise to the restaurant upon nondiscrimination in the services to be rendered:

> "in its lease with Eagle the [public] Authority could have affirmatively required Eagle to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation. But no State may effectively abdicate its responsibilities by either ignoring them or by merely failing to discharge them whatever the motive be."

Constitutional and Statutory Bases

The repeated Supreme Court rulings make clear the obligation of the executive to refrain from supporting or assisting restrictive racial practices, whether engaged in by public officials or private persons. No state official, therefore, needs any legal authority beyond the Federal Constitution itself in order to discontinue any state support or assistance to "private" practices of discrimination. But there is additional legal authority in state constitutions and legislation. The constitutions of many states embody the general requirements of equal treatment—a requirement which, though couched in general terms, clearly speaks to every executive official of the state.

Moreover, there are numerous state statutes which either specifically recognize civil rights or, by implication, may be construed to provide executive authority to require nondiscrimination. Thus, many statutory programs enacted in the states embody the concept that the benefits be made available to "all well-behaved and eligible persons," or that access to the privileges and assistance provided be "reasonably or fairly accorded." While such requirements may not expressly speak of race, it is clear that discrimination or segregation is inconsistent with the requirement of fairness or reasonable and equal treatment.

Finally, the substantive provisions of specific statutes may be amenable to civil rights construction. Thus, the precept of maximum educational opportunity in public schooling has been made the basis of abolishing *de facto* segregation. In like manner, panic-selling practices have been deemed to show "incompetence" within the meaning of statutes for the licensing of real estate brokers. In such ways, the executive may find that state assistance or support to segregation (or those who segregate) is inconsistent not only with executive responsibility under the Fourteenth Amendment to the U.S. Constitution and

state civil rights policies, but also with the legislative intent to make state programs reflect current standards of fairness and impartiality.

The legal authority for state executive action to promote civil rights is clear. The question, as has been pointed out, is not whether the authority exists, but how forthrightly state executive officials will accept their Constitutional responsibility to minority group citizens. That is an issue which addresses itself not to the authority but to the conscience of the executive.

Conclusion

"Where there is a will, there is a way."

The preceding sections have reviewed civil rights progress in states where the executive and his subordinates have the will to promote progress. But stimulating that will to achieve, and the executive persistence necessary to carry out the progressive purpose, remains the task of citizens within the several states. Only when citizens demand of their officials actions consistent with their highest ideals and aspirations can progress be maintained in the face of the great social obstacles to civil rights reform—prejudice, fear, procrastination, and the many countervailing pressures upon preoccupied government officials.

The roads to progress are well-marked and the means are at hand for their achievement through avenues of state executive action; and what may not be gained by state executive action alone can certainly be achieved by civil rights legislation. The Governor has a prime obligation to press for strong and comprehensive civil rights laws and for adequate legislative support through funds and sanctions to make the principle of equal opportunity workable.[44]

But apart from any particular course of action there remains the fundamentally important public image which the executive projects

[44] While this study has confined itself to the area of state executive action, there is of course the very important area of executive concern in the enforcement of civil rights statutes and in the procurement of additional and improved civil rights laws. It is the role of the chief executive to set forth public policy to enforce legislation and judicial decisions in civil rights and to extend Constitutional rights to those administrative areas, particularly within his competence, where the legislature and the judiciary have but secondary involvement.

on the civil rights issue. Civil rights progress cannot be made stealthily, for even the most efficient systems will lie dormant if state officials, legislators, and the public at large feel that the executive lacks the conviction or the fortitude necessary to translate civil rights principles into reality.

These considerations make it indispensable that our Governors speak out for the concept of a desegregated society and fair practices throughout the state. They equally require that the executive make it crystal clear to his executive family that those charged with departmental authority will accept and carry forth affirmative civil rights programs in their respective fields of responsibility. The chief executive can further signify his determination to make civil rights a reality by choosing recognized supporters of minority rights for key positions affecting the expansion of equal opportunity in housing, employment, education, and public accommodations. By such means, the state executive can become a major force in the affirmative process which creates genuine equality for the minority citizens of our nation.

APPENDIX A

STATE OF NEW YORK
GOVERNOR'S CODE OF FAIR PRACTICES

PREAMBLE

Our spiritual heritage proclaims the supreme worth of the individual and the equality of opportunity for each individual to pursue self-realization. This American passion for justice and equality in freedom not only stirred us to life as a nation, but has continued to serve as our national purpose.

Our capacity as a people to express this heritage, to give it newer and broader meaning and application, is again being tested today—in our nation and in the world. It is only the fullest expression of this heritage that can give meaning to our way of life.

The State of New York has been a leader in the furtherance of individual worth, justice, equality and freedom. It has been in the forefront in the elimination of discrimination based on race, color, creed or national origin, but it is imperative that our cooperative efforts be strengthened and sustained to further this noble cause.

In pursuit of the State's basic policy against discrimination, the following Code of Fair Practices shall obtain throughout the Executive Branch of State Government:

ARTICLE I APPOINTMENT, ASSIGNMENT AND PROMOTION OF STATE PERSONNEL

State officials and supervisory employees shall appoint, assign and promote State personnel on the basis of merit and fitness, without

regard to race, color, creed, national origin or age. State agencies shall bar from all employment application forms any inquiry expressing any limitation or specification as to race, color, creed, national origin or age, unless it relates to a bona fide occupational qualification.

ARTICLE II STATE ACTION

In performing their service to the public, the agencies of the State shall not discriminate because of race, color, creed, national origin or age, nor shall they authorize the use of State facilities in furtherance of discriminatory practices.

ARTICLE III PUBLIC CONTRACTS

Every State contract for public works or for goods or services shall contain the clauses prescribed by Section 220-e of the Labor Law barring discrimination on account of race, color, creed or national origin, and such contractual provisions shall be fully and effectively enforced.

ARTICLE IV STATE EMPLOYMENT SERVICES

Any State agencies engaged in employment referral and placement services for private industry or public agencies shall fill all job orders on a non-discriminatory basis, and shall decline any job order carrying a specification or limitation as to race, color, creed, national origin or age, unless it relates to a bona fide occupational qualification. Information concerning employers believed to engage in discriminatory practices shall be referred by State agencies to the State Commission Against Discrimination for investigation and conciliation and, if appropriate, the matter shall then be referred to the Industrial Commissioner or Attorney General for the exercise of their statutory authority to commence proceedings before the State Commission Against Discrimination.

ARTICLE V TRAINING FOR JOB OPPORTUNITIES

All educational and vocational guidance counseling programs and all apprenticeship and on-the-job training programs of the State shall be conducted to encourage the fullest development of interests and aptitudes, without regard to race, color, creed, national origin or age.

ARTICLE VI STATE FINANCIAL ASSISTANCE

In granting State financial assistance, State agencies shall be vigilant to further the State's policy of non-discrimination and shall

give appropriate attention to discriminatory practices engaged in by any applicant or recipient.

ARTICLE VII STATE FORMS

All State agencies shall avoid in forms or requests for information any item or inquiry expressing any limitation or specification as to race, color, creed, national origin or age, unless the item or inquiry is expressly required by statute or is required in good faith for a proper purpose and prior notification of its use has been given by the agency to the State Commission Against Discrimination.

ARTICLE VIII STATE LICENSING AND REGULATORY AGENCIES

Where a respondent in a proceeding before the State Commission Against Discrimination is subject to the licensing or regulatory power of another State agency, the State Commission Against Discrimination shall notify the State agency of the pendency of such proceeding. If, thereafter, the respondent is found by the State Commission Against Discrimination, after notice and an opportunity to be heard, to have engaged in a discriminatory practice, the State agency shall be so notified and shall take appropriate action consistent with the exercise of its licensing or regulatory power.

ARTICLE IX COOPERATION WITH THE STATE COMMISSION AGAINST DISCRIMINATION

All State agencies, in accordance with the provisions and intent of the State Constitution and the State's laws against discrimination, shall cooperate fully with the State Commission Against Discrimination and duly comply with its requests and recommendations for effectuating the State's policy against discrimination.

ARTICLE X CONDUCT BY THE STATE'S REPRESENTATIVES

State officials and employees shall be ever mindful of the democratic heritage of the State which abhors any discrimination on the basis of race, color, creed, national origin or age, and shall take all necessary steps to effectuate the provisions and intent of this Code of Fair Practices.

ARTICLE XI PUBLICATION OF CODE OF FAIR PRACTICES

Copies of the Code shall be distributed to all State officials and employees and copies shall be posted in conspicuous locations in all State facilities.

/s/ Nelson A. Rockefeller
Governor of the State of New York
Albany July 15, 1960

APPENDIX B

STATE OF MICHIGAN
GOVERNOR'S CODE OF FAIR PRACTICES

PREAMBLE

In the American beginning, our forebears set forth the principle that all men are created equal, that they are endowed by their Creator with certain unalienable rights. This is the high commitment of our national purpose. No state constitution, no state law can hinder the pursuit of equality, justice and liberty; neither must common practice.

The State of Michigan has an enviable record for championing the cause of democracy. Through executive leadership, legislative action and judicial edict we have taken great steps to help guarantee the rights of all citizens.

The existence of a fair employment practices act in our state imposes a special responsibility on all agencies to keep their own houses in order. We must see to it that race, creed or national origin are never a factor in recruiting, hiring, upgrading, conditions of employment, dismissals, referrals, and training programs. State government, as an employer, has a responsibility to serve as a model for business, industry, labor and private employment agencies.

ARTICLE I APPOINTMENT, ASSIGNMENT AND PROMOTION OF STATE PERSONNEL

State employees shall be appointed, assigned, and promoted on the basis of merit alone. Race, color, religion, national origin, or ancestry shall play no part in state personnel policies or practices. No state

employment application form shall contain any inquiry regarding these extraneous factors; no state personnel form shall contain such information. Appointing authorities should make a special effort to make certain that their flexibility in making selections is not used to circumvent utilization of minority group persons.

ARTICLE II STATE SERVICES AND FACILITIES

Equal treatment of all persons without regard to race, color, religion, national origin, or ancestry shall be guaranteed by all state agencies in performing their services to the public. Segregation will not be tolerated in any state facility, nor shall any state facility be used in the furtherance of any discriminatory practices.

ARTICLE III COOPERATION WITH THE STATE FAIR EMPLOYMENT PRACTICES COMMISSION

All state agencies shall cooperate fully with the State Fair Employment Practices Commission and shall duly comply with their requests and recommendations for effectuating the state's policy against discrimination. Constitutionally created agencies may work out agreements with the Fair Employment Practices Commission.

ARTICLE IV STATE EMPLOYMENT SERVICES

All state agencies engaged in employment referral and placement services for private or public employers shall fill job orders only on a non-discriminatory basis; they shall refuse any job order specifying any preference or limitation based on race, color, religion, national origin, or ancestry and shall inform the Fair Employment Practices Commission of this prohibited request. If a request for exemption based on a bona fide occupational qualification is made by an employer it shall be referred to the Fair Employment Practices Commission.

ARTICLE V STATE LICENSING AND REGULATORY AGENCIES

Race, color, religion, national origin, or ancestry shall play no part in a state licensing agency's decision to grant, deny, or revoke a license.

Where a duly constituted governmental authority, in an official proceeding conducted according to law, finds that a licensee has, in his capacity as such, discriminated against anyone because of race, religion, national origin or ancestry the appropriate licensing authority shall take such disciplinary action against the licensee as may be provided for.

ARTICLE VI STATE CONTRACTORS AND SUB-CONTRACTORS

Every state contract and subcontract for public works or for goods or services shall contain the clause prescribed by Section 4 of the Fair Employment Practices Act (Act 251—Public Acts of 1955), prohibiting discriminatory practices by contractors and subcontractors. Such contractual provisions shall be fully and effectively enforced; breach of them shall be regarded as a material breach of the contract. Each state agency shall submit to the governor as part of its annual report, certification of implementation of the non-discriminatory contract clause (see Article X).

ARTICLE VII EDUCATION, TRAINING AND APPRENTICE PROGRAMS

All educational and vocational guidance counseling programs and all apprenticeship programs and on-the-job training programs of the state, or in which the state participates, shall be open to all qualified persons, without regard to race, color, religion, national origin, or ancestry.

ARTICLE VIII STATE FINANCIAL ASSISTANCE

All state agencies engaged in granting financial assistance shall deny it to any applicant and withdraw it from any recipient engaged in discriminatory practices, consistent with the statute under which they operate.

ARTICLE IX PROMULGATION OF NON-DISCRIMINATORY EMPLOYMENT POLICIES

All State agencies shall promulgate a clear, definitive written policy of non-discrimination in employment; they shall review regularly their personnel practices and procedures and correct any which may contribute to the possibility of discrimination; they shall include in their continuing on-going programs of orientation and training special emphasis on non-discriminatory employment.

ARTICLE X ANNUAL REPORTS

Each state appointing authority shall report annually to the governor between December 15 and January 1, all activities undertaken in the past year to effectuate this CODE OF FAIR PRACTICES. The

report shall cover both internal personnel practices and external relationships with the public and with other state agencies.

ARTICLE XI PUBLICATION AND POSTING OF THIS CODE

Copies of this code shall be distributed to all state officials and appointing authorities. Copies shall be posted in prominent locations in all state facilities.

/s/ John B. Swainson
Governor of the State of Michigan
Lansing May, 1961

APPENDIX C

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S CODE OF FAIR PRACTICES

PREAMBLE

In this Nation it is held that every individual is entitled to respect and the opportunity to compete for a place in our society, on the basis of individual capacity and ability.

When race, religion or national origin become the criteria by which individuals are measured, then discrimination displaces justice and democracy becomes a mockery.

No unit or system has greater responsibility than government itself to safeguard and to foster the right of all persons to utilize their productive capacities to the fullest.

The Commonwealth of Pennsylvania has recognized its position of leadership in this respect and proposes further to strengthen its efforts in behalf of this objective.

In keeping with this intent and spirit, I proclaim the following Code of Fair Practices to be the governing policy throughout the executive branch of government of the Commonwealth of Pennsylvania.

ARTICLE I APPOINTMENT, ASSIGNMENT AND PROMOTION OF STATE PERSONNEL

State officials and employees shall recruit, appoint, assign, promote and discharge personnel on the basis of ability and fitness, without

regard to race, color, religious creed, ancestry, age or national origin. State agencies shall bar from all employment application forms any inquiry regarding race, color, religious creed, ancestry or national origin.

ARTICLE II PROMULGATION OF NON-DISCRIMINATORY POLICIES

All State agencies shall promulgate and affirmatively carry out a clear, definitive written policy of non-discrimination and fair practices. They shall regularly review their personnel practices and procedures and correct any which may contribute to the possibility of discrimination. They shall include, in their continuing programs of orientation and training, special emphasis on non-discriminatory practices and services.

ARTICLE III TRAINING FOR JOB OPPORTUNITIES

All educational programs, vocational guidance counseling services and all apprenticeship and on-the-job training programs of the State shall be conducted to encourage the fullest development of interests and aptitudes, without regard to race, color, religious creed, ancestry, age or national origin.

ARTICLE IV STATE SERVICES AND FACILITIES

Equal treatment of all persons without regard to race, color, religious creed, ancestry, age or national origin shall be guaranteed by all State agencies in performing their services to the public. Segregation will not be tolerated in any State facility, nor shall any State facility be used in the furtherance of any discriminatory practices.

ARTICLE V EMPLOYMENT SERVICES

All State agencies engaged in employment referral and placement services for private or public employers shall fill job orders only on a non-discriminatory basis. They shall refuse any job order specifying any preference or limitation based on race, color, religious creed, ancestry, age or national origin and shall refer such prohibited requests to the Pennsylvania Human Relations Commission for investigation, conciliation and other appropriate action.

ARTICLE VI COOPERATION WITH THE PENNSYLVANIA HUMAN RELATIONS COMMISSION

All State agencies, in accordance with the provisions of the State's laws against discrimination shall cooperate fully with the Pennsyl-

vania Human Relations Commission and duly comply with its requests and recommendations for effectuating the State's policy against discrimination.

ARTICLE VII STATE LICENSING AND REGULATORY AGENCIES

All State agencies receiving information on complaints of discrimination based on race, color, religious creed, ancestry, age or national origin shall promptly advise the Pennsylvania Human Relations Commission. The Pennsylvania Human Relations Commission shall notify any State agency which has licensing or regulatory power of the pendency of a proceeding. If, thereafter, a party is found to have engaged in a discriminatory practice, such State agency shall be notified and shall take appropriate action against the respondent.

ARTICLE VIII PUBLIC CONTRACTS

Every State contract for public works or for goods or services shall contain a clause barring discrimination on account of race, color, religious creed, ancestry, age or national origin, and such contractual provisions shall be fully and effectively enforced.

ARTICLE IX STATE FINANCIAL ASSISTANCE

All State agencies engaged in granting financial assistance or in making payment of any public funds shall deny the same to any institution or organization engaged in discriminatory practices based upon race, color, religious creed, ancestry, age or national origin.

ARTICLE X OTHER GOVERNMENTAL BODIES

All political subdivisions, school districts and other instrumentalities of government are requested to cooperate in this endeavor to the end that any and all discrimination within the Commonwealth is eliminated.

ARTICLE XI PUBLICATION AND POSTING OF THIS CODE

Copies of this code shall be distributed to all executive branches of the government, political subdivisions, boards, departments, com-

missions, school districts and all other agencies of the Commonwealth of Pennsylvania, and shall be posted in prominent locations.

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this twenty-fourth day of December, in the year of our Lord one thousand nine hundred and sixty-one, and of the Commonwealth the one hundred and eighty-six.

/s/ David L. Lawrence
Governor

BY THE GOVERNOR:
/s/ E. James Tremivich, Jr.
Secretary of the Commonwealth

APPENDIX D

STATEMENT OF POLICY

Adopted January 28, 1960

by the

NEW YORK STATE BOARD OF REGENTS

"After the Supreme Court decision of May 1954, we have all been a part in re-evaluating the role of education in a democracy. It was of greatest significance that the Court in its historic decision stated:

> 'We must consider public education in the light of its full development and its present place in American life throughout the nation . . .
>
> 'Today, education is perhaps the most important function of state and local governments . . . it is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education . . .
>
> '. . . to separate (them) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone . . .'

"The State of New York has long held the principle that equal educational opportunity for all children, without regard to differences in economic, national, religious or racial background, is a manifesta-

tion of the vitality of our American democratic society and is essential to its continuation. This fundamental educational principle has long since been written into Education Law and policy. Subsequent events have repeatedly given it moral reaffirmation. Nevertheless, all citizens have the responsibility to reexamine the schools within their local systems in order to determine whether they conform to this standard so clearly seen to be the right of every child.

"Modern psychological knowledge indicates that schools enrolling students largely of homogeneous, ethnic origin, may damage the personality of minority group children. Such schools decrease their motivation and thus impair the ability to learn. Public education in such a setting is socially unrealistic, blocks the attainment of the goals of democratic education, and is wasteful of manpower and talent, whether this situation occurs by law or by fact.

"In seeking to provide effective education for all the children of this State, boards of education are faced with many obstacles in the form of complex social and community problems. Among them is the existence of residential segregation which leads to schools with students predominantly of one race on the elementary and high school levels.

"In spite of these and other difficulties, the Regents are determined to accept this challenge facing our schools today. We charge the Regents Advisory Council on Intercultural Relations in Education, working in close cooperation with the State Education Department, to assist in seeking solutions to the educational aspects of the problem. The Council's recommendations for action, based on systematic and objective study, will be reported to the Regents in due course.

"We recognize that we who have been given the responsibility for the education of the children and youth in our State can deal directly with only these educational aspects. There are larger community problems which influence the quality of education in, and the ethnic composition of our schools. So long as these larger social problems remain unsolved, it will be difficult to solve some of the basic and related educational situations. For this reason, therefore, we call upon all our citizens and their agencies of government and their civic organizations to take concrete steps to provide the social climate which will make it possible for us to increase the effectiveness of education. Only with this cooperation will we be able to provide that type of democratic education which will enable all children to contribute their understanding, knowledge and skills to increase the greatness of our State and our Nation."

APPENDIX E

RESOLUTION

Adopted June 14, 1962

by the

CALIFORNIA STATE BOARD OF EDUCATION

"In its historic decisions of May 17, 1954, the Supreme Court of the United States declared that segregation of school children on account of race or color, even where physical facilities and other tangible factors are equal, inevitably results in unlawful discrimination. In California, by law and custom, we have historically operated on the democratic principle of equality of educational opportunity for all children, without regard to race or color, and for this reason it was easy for us to accept the underlying hypothesis of that decision and applaud its rendition. We now find, however, that primarily because of patterns of residential segregation, some of our schools are becoming racially segregated in fact, and that this challenge to equality of educational opportunity must be met with the full thrust of our legal authority and moral leadership.

"We fully realize that there are many social and economic forces at play which tend to facilitate de facto racial segregation, over which we have no control, but in all areas under our control or subject to our influence, the policy of elimination of existing segregation and curbing any tendency toward its growth must be given serious and thoughtful consideration by all persons involved at all levels. Wherever and whenever feasible, preference shall be given to those programs which will tend toward conformity with the views herein expressed."